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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,340	07/24/2006	Michael G. Marcoux	COR21 P306B	8838

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EXAMINER
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JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

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06/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,340	<b>Applicant(s)</b> MARCOUX ET AL.	
	<b>Examiner</b> BRANDON JACKSON	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 23-65 and 68-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 66 and 67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/3/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

This application contains claims directed to the following patentably distinct species

- I. Claims 1-22 and 66-67, drawn to a wound dressing and method of use, classified in class 602, subclass 41.
- II. Claims 23-27, drawn to a wound dressing with anti-static coating, classified in class 602, subclass 57.
- III. Claims 28-42 and 68-69, drawn to a wound dressing with angled thumb tab and method of use, classified in class 602, subclass 57.
- IV. Claims 43-57, drawn to a wound dressing with a handle that does not extend to the periphery of the polymeric film, classified in class 602, subclass 57.
- V. Claims 58-63 and 70, drawn to a wound dressing with two adhesive layers, a handle that does not extend to the periphery of the polymeric film, and a method of use, classified in class 602, subclass 57.
- VI. Claims 64-65, drawn to methods of using a wound dressing while minimizing electrostatic charge build up, classified in class 128, subclass 898.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are

added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

During a telephone conversation with Jeffery Kapteyn on 6/4/2008 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-22 and 66-67. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-65 and 68-70 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4, 19, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims the contact area between the handle and the polymeric film is reduced by 10% to about 70%, 50%, and 30%. However, this is not a reduction, but an increase. Thus the claims are indefinite. The Examiner is examining the claims as though the reduction is from 70%, 50%, and 30% to about 10%.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14-22, 66 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinecke et al. (US Patent 5,738,642). Heinecke discloses a wound dressing (210) comprising a handle (212), a polymeric film (214) having first and second sides, wherein at least a portions of the polymeric film (214) is coated with an adhesive layer (216) on the first side, and the handle (212) is adhered to the second side of the polymeric film (214). The continuity of contact between the handle and the second surface of the polymeric film (214) is interrupted at a least a portion (250), which is a

slot, of the edge of the handle (212). The handle (212) is textured by slots (250) through the handle (212). The slots (250) are fully capable of being oriented in a zig-zag pattern (i.e. diagonally) (col. 8, lines 14-17) relative to the edge of the handle (212), or parallel (col. 8, lines 5-7) to the handle (212). The texture is debossed by the die cuts made in the handle (212) in order to make the slot (250). The handle (212) is made of paper (col. 6, lines 10-13), which is relatively rougher than a polymeric film (214) and can be adhered (col. 6, lines 7-9) to the polymeric film (214). When the handle (212) is made of a paper (col. 6, lines 10-13) then there would be an electrostatic attraction between the handle (212) and the polymeric film (214). The handle (212) comprises a conductive layer, which is the low adhesion coating (col. 6, lines 30-46), and a no-conductive layer, which is the polymeric material (col. 6, lines 10-13).

With respect to claims 2-4, 19, 22, and 67; the contact area between the handle (212) and the polymeric film (214) is fully capable of being any percentage desired by the user, because it is merely determined by how much of the handle (212) is peeled off of the polymeric film (214). Therefore, contact area between the handle and polymer film is fully capable of being between about 10% and 70%.

With respect to claims 6-7 and 10, the claims are device claims and therefore the process of how the slots/texture are obtained will not be considered because that is a method step to reach the end product, only the end product of the slots/texture will be considered.

***Claim Rejections - 35 USC § 103***



The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11 and 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heinecke et al. (US Patent 5,738,642). Heinecke substantially discloses the claimed invention, see rejections to claims 1-2 and 5 above. Heinecke fails to disclose the texturing comprises the handle being knurled and the adhesive is printed on the handle in a pattern. However, Heinecke teaches it is beneficial for the texture to be in patterns other than merely a linear cut because it prevents undesired folding of the handle (col. 8, lines 5-11). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Heinecke handle to be knurled, in order to prevent accidental folding of the handle and to allow selective removal of the handle from the polymeric film.

With respect to claim 13, Heinecke fails to disclose how the adhesive is distributed upon the handle (212). However, it would be obvious to one of ordinary skill

in the art to distribute the adhesive upon the handle in any pattern designed by the user as long as it sufficiently holds the handle upon the polymeric film.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grossman (US Patent Application Publication 2005/0256439), Heinecke et al. (US Patents 6,685,682; 6,436,432), Dozier et al. (US Patent 7,135,606).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3772

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